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# The Oceans

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## THE OCEANS

THOMAS A. CLINGAN, JR.  
*Professor of Law*  
*University of Miami*

### NEW U. S. LEGISLATION ON FISHING BOAT SEIZURES

Under the terms of the Fisheries Protective Act of 1967, when a vessel of the United States was seized by any country on the basis of claims to territorial waters not recognized by the United States, any fines resulting from such seizure would be reimbursed by the government. The Act went on to provide that the Secretary of State of the United States should take such action as appropriate to make and collect claims for the amounts so expended, and, if a country which had seized a U. S. vessel should fail to make payment within 120 days after receiving notice of a claim, the Secretary "shall withhold, pending such payment, an amount equal to such unpaid claim from any funds programed for the current fiscal year for assistance to the government of such country . . ."

The Act has been applied, however, as though the language requiring the Secretary to withhold foreign aid was discretionary and not mandatory. Under new legislation recently signed by the President, such a cutoff in aid would be automatic. The governments of Chile, Ecuador and Perú reacted with a joint statement that "rejected and condemned" the new law as economic reprisals. Many such bills had been introduced into Congress in previous years, but had been rejected for one reason or another. The previous feeling had been that the remedy was inappropriate to the wrong, but the increase in the number of seizures of American vessels apparently took its toll on the attitudes of members of the Congress.

### LATIN AMERICAN EXPANSION OF FISHING EFFORT

U. S. tuna fleets, it appears, can expect increasing competition from Peruvian and Ecuadorian Pacific fishing fleets. This is particularly true in the case of Peru, which had earlier shutdown more than 60% of

its tuna canneries when, because of U. S. duties and other factors, Peruvian fishermen turned to anchovy, a fish easier to catch and less complicated to process. Now that the anchovy industry appears to be fading due to overfishing, the fishermen are once more looking to tuna, hake, and other species.

To encourage the trend toward diversification, the Peruvian government has decreed that companies (including foreign companies) which catch, process, or market food fish, will enjoy an exemption from the payment of taxes up to a limit of 20% of profits. The government will also waive some of the regulations (precisely which ones is unclear) providing for Peruvian takeovers of foreign-owned industry. This has raised U. S. hopes that relief will thus be provided for the Peruvian-based U. S. fishing industry from the requirement of the Andes Agreement that foreign-owned industries must sell 51% of their shares to Latin Americans within fifteen years.

Indicative of Perú's intent in favor of diversification of its fisheries industry is the plan now developed for a \$59 million fish processing complex, in part supported by Soviet capital, at Paita which, when completed, is expected to have the capacity to process 104,000 metric tons of fish annually.

#### FISHING RESTRICTIONS IN MEXICAN WATERS

In 1967, Mexico extended its claim to a territorial sea from nine to twelve miles, but foreign fishing boats were permitted to fish in the extended zone. That permission expired in 1972, and now the Mexican government has made it clear that no vessel will be permitted to fish in this twelve mile zone unless the majority of its crewmen are Mexican. Japan has already notified Mexico that it will respect the new rule, and leaders of the U. S. fisheries industry have scheduled meetings with the Mexicans, although Foreign Secretary Emilio Rabasa has explained that there will be no exceptions to the rule.

#### VENEZUELA-COLOMBIA TALKS CONTINUE

Venezuela and Colombia continued their talks in the eighth of a series of negotiations over more than two years concerning the rights of each to exploit the oil rich reserves of the continental shelf of the Gulf of Venezuela. The latest talks have been held in Rome, with the three-man

Venezuelan delegation headed by Deputy Foreign Minister José Alberto Zambrano. Other details of the talks, which have been held in confidence, are sketchy.

The long-standing dispute between the two nations centers upon the method by which the mutual border between Venezuela and Colombia on the north of the Gulf of Venezuela should be extended seaward to delimit the areas of the continental shelf under the control of each nation. Such an extension of a border would naturally bring into play the concept of the median-line as propounded in the 1958 Convention on the Continental Shelf, with possible modifications being called for by the "special circumstances" rule, or by general principles of equity called for in the *North Sea* case by the International Court of Justice.

#### LAW OF THE SEA NEGOTIATIONS

Dates have now been set for the next two meetings of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction to continue the negotiations leading to the next Law of the Sea Conference. The first meeting is scheduled to take place in New York from March 5 to April 6; the second, in Geneva from July 2 to August 24. These remaining working sessions will likely focus, at least in part, upon the substance contained in a list of issues relating to law of the sea developed during the meeting in Geneva last August. While the list is broadly comprehensive, it is believed to be the basis from which a working agenda can be derived. The Conference itself is scheduled to begin in Santiago, Chile, in the Spring of 1974, with a brief organizational session being held in the Fall of 1973.

In an article for *The Washington Post*, Professor Stephen M. Schwebel, who lectures on international law at the School of Advanced International Studies of the Johns Hopkins University, set forth what, in his opinion, the essential topics of the Conference will be:

- a. Fishing jurisdiction. "The outlook is that coastal states will be invested with wide power to restrict foreign fishing in coastal waters . . . whose seaward limit will be set at 50 or perhaps 100 miles from shore."
- b. Continental shelf. "The outlook is that states whose land mass extends out below the seas will be confirmed in their exclusive right to exploit the shelf's petroleum and other resources, out to a distance or depth to be established, perhaps of 50 miles or 200 meters (656 feet)" respectively.

- c. The deep seabed, the "common heritage of mankind," will be "exploited by or under the auspices of some form of international authority." It is believed that it contains enormous deposits of manganese, copper and other metals.
- d. Pollution. "The increasing danger of intolerable pollution of the seas can only be effectively met by uniform international regulations enforced both in national and international waters." This deals primarily with the dumping of oil at sea.
- e. Scientific research. "While scientists of technologically advanced states traditionally have enjoyed great freedom for scientific research in the seas, more recently a number of countries have been increasingly restrictive in waters over which they claim control."
- f. Transit through straits and waters now international. "If a package of general and viable agreements is to be wrapped up, the assertion of wider national jurisdiction over the seas will . . . have to be essentially limited to exploitation of fishing and the deep seabed and maintain freedom of transit for foreign vessels of commerce and war where it now actually exists."

Other activity concerning the U. N. Conference includes a proposal by the Caribbean nations for a Latin American conference to be held in Mexico during the first quarter of 1973. The aim of the Mexico conference is to establish positions prior to the U. N. Conference.

#### JAMAICA CONFERENCE ON GULF AND CARIBBEAN PROBLEMS

A preparatory conference was held on October 26-28, 1972 in Kingston, Jamaica, by the Center for the Study of Democratic Institutions at Santa Barbara, California, on Caribbean and Gulf Development and its Impact on the Maritime Environment. The meeting, preliminary to the Pacem in Maribus meeting of the Center, held annually in Malta, was under the direction of Elisabeth Mann Borgese, and chaired by Sir Egerton Richardson, of Jamaica.

The conference covered a wide range of topics, including the geography of the area under discussion, its resources, the potential for pollution, research needs and technology transfer, and the framing of a legal regime for the Gulf and Caribbean as a region or subregion.

During the conference, a good deal of discussion was devoted to the concept of the patrimonial sea, which was adopted in June at the Conference of Santo Domingo (4 *Law. Am.* 576-577, 1972), and variations on this basic economic-zone approach to resource management. The patrimonial sea concept would allocate resource management functions over resources, living and non-living, on the seabeds, in the subsoil, and in the vertical water column, to a distance of at least 200 miles seaward, to the coastal State. Professor H. Gary Knight of Louisiana State University, presented a paper including a chart showing the consequences of the application of that doctrine to the Gulf and Caribbean, in terms of the areas and kinds of resources made available to each nation, and then other alternatives, such as a commonly shared regional zone (called by some the "matrimonial" sea) with the profits allocated among the members, or an application of the archipelago and "closed seas" concepts as partial solutions were discussed. The major thrust of the meeting was the examination of various types of regional arrangements available to the Gulf and Caribbean, and the feasibility of such arrangements within a broader world structure.

The papers presented at the conference will be available shortly from the Center for the Study of Democratic Institutions.

#### BAHAMIAN-U. S. LOBSTER DISPUTE

A series of incidents involving alleged encroachment in Bahamian waters by United States lobster fishing boats has put new emphasis on the need for clarification of international fisheries law, and for procedures governing the conduct of lobster fishing in the Bahamas. The pending creation of an independent Bahamian nation has had its effect on the genesis of these problems as well. The Prime Minister has indicated his desire to reconsider existing agreements, and to negotiate new ones with the United States upon independence, and has particularly indicated the possibility of resuming talks concerning participation of U. S. fishing vessels in waters claimed by the Bahamas. In addition, in his recent "white paper," Mr. Pindling declared his interest in exploring ways to utilize the "archipelago" concept for delimitation of waters subject to Bahamian national control. This concept, also advocated by Indonesia, the Philippines, and others, is based upon the theory that island states have the right to draw an envelope around a chain of island land masses, and to claim special rights in waters thus enclosed. The precise nature of the waters enclosed, and the criteria for constructing the envelope,

vary from claim to claim. Some authorities feel that the enclosed waters take on the nature of inland waters or territorial seas, while others would prefer a more liberal view guaranteeing some rights of navigation and overflight. Some nations would construct the envelope on geographical principles, limiting the allowable distance between islands subject to the concept. Others prefer the test of political unity, which would ignore all such factors. Of course, still others (probably a majority), presently reject the concept entirely. Those advocating the use of the principle rely upon the theory of the *North Seas Fisheries* case which permitted Norway to draw a series of straight baselines so as to enclose certain areas making them internal waters on the theory that those areas more closely associated themselves geographically and economically with the land than with the water.

Should the Bahamas opt for an archipelago claim, the status of a large area of water now believed to be of international character would be placed in dispute. Such a claim would undoubtedly be rejected by the United States, and the uncertainty thereby created may lead to an increase in disputes, such as those recently observed.

One or two examples should put the problems into perspective. The first recent threat to peaceful fishing in the area occurred on October 4, 1972. The crew of the Bahamian fishing vessel *Sea Star*, operating out of Spanish Wells, reported that they had been fired upon by an American fishing vessel near Flamingo Cay in the Bahamas. Accordingly, fishermen from Spanish Wells declared their intention to return to the Flamingo Cay area armed for the purpose of forcing a confrontation. The U. S. Coast Guard was alerted and dispatched two vessels, a helicopter, and an aircraft to the area. A patrol was established in international waters from October 16 through October 20, without event, and the situation cooled.

Meanwhile, on October 19, the British frigate *Plymouth*, assigned to the Bahamas for security patrols, in company with three Bahamian patrol boats, conducted a fisheries enforcement sweep from Orange Cay north to Great Isaac Island, near Bimini. On that date, a report was received that the Bahamian patrol boats were in pursuit of several American fishing vessels in the area east of Bimini. A U. S. Coast Guard plane was dispatched to the scene in time to observe sixteen U. S. fishing vessels at anchor  $16\frac{1}{2}$  miles from Bimini; however, Bahamian reports would indicate that the vessels were within the limits of the Bahamian Contiguous Fisheries Zone of 12 miles because of their proximity to Hens

and Chickens Island. Five U. S. vessels were seized for violation of Bahamian fishing law, and twenty crew members were subsequently tried and convicted.

On November 3, 1972, Bahamian authorities announced that four Bahamian fishermen had been attacked by the U. S. fishing vessel *Diamondhead II*, although such an attack was denied by the owner of that vessel. On November 5, the *Diamondhead II*, in company with the *Diamondhead*, was again in the vicinity of Walker Cay when attacked by vessels identified by the owner as Bahamian. The *Diamondhead II* subsequently displayed six bullet holes as evidence of the attack. Later, alleging that 400 to 600 of his lobster traps had been stolen by Bahamian fishermen and removed to places within Bahamian waters, the owner of *Diamondhead II* armed his crew and returned to the scene, whereupon he removed his traps and reset them in international waters, all without incident.

These events have raised a number of problems, legal and political. By implication, at least, the U. S. has recognized the right of the Bahamas to a three mile territorial sea and an additional fisheries enforcement zone of nine miles. The five vessels seized by Bahamian authorities were, at the time of the seizure, in this outer belt, but were not, at the time of seizure, in the act of fishing.

However, there is credible evidence indicating that the vessels earlier had been sighted in the act of fishing closer inshore, within the contiguous zone, and had been pursued by the Bahamian patrol vessels. Before any arrest could be consummated, the patrol vessels were forced to break off their pursuit and return to the *H.M.S. Plymouth*, anchored some miles away, to board marines. The patrol boats then returned to the place where the fishing vessels had anchored and were able to effectuate the arrest of five of the vessels.

The arrests, it would seem, were premised upon one of two possible theories. The first is that the patrol vessels made their arrest while in hot pursuit of vessels which had violated Bahamian law. However, in order for the arrest to be made upon the high seas under the doctrine of hot pursuit, it must be demonstrable that the pursuit was continuous and uninterrupted. The return of the patrol vessels to the mother craft places this question in issue. The second justification for the arrest is that the fishing vessels were in violation of some law of the Bahamas when the patrol vessels returned to the scene. By Bahamian statutory law, any vessel found within the contiguous fisheries enforcement zone with



fish on board may be arrested under a presumption that such fish, regardless of specie, were taken in Bahamian waters. This presumption could be questioned on the basis of an unjustified interference with the principle of freedom of navigation as it is enunciated in the 1958 Convention on the High Seas, or the principle of innocent passage, if the arrest were to be made in the territorial seas.

Whatever occurs, it is apparent that further conflicts of this nature will not be conducive to peaceable settlements, and that the legal issues will necessarily blend into political solutions. Negotiations will need to be undertaken, directed possibly, toward a licensing system, and these negotiations may be expected to be undertaken in earnest following Bahamian independence. At that time, the problem of lobster fishing will likely be but one part of a broader Bahamian-U. S. agreement involving a number of vital issues. In the interim, incidents, if they occur will have to be handled on an ad hoc basis, calling for strong lines of communication between the Bahamian Police on the one hand, and the U. S. Coast Guard and National Marine Fisheries Service on the other.

#### UNITED STATES-BRAZIL INTERIM SHRIMP FISHING AGREEMENT

In 4 *Law. Am.* 363-364, 1972, a brief outline was presented of the agreement between the United States and Brazil concerning the fishing for shrimp off the coast of Brazil by American shrimp boats. The full text of that agreement is reproduced herein.

#### AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING SHRIMP

*The Parties to this Agreement,*

*Note the position of the Government of the Federative Republic of Brazil,*

*that it considers its territorial sea to extend to a distance of 200 nautical miles from Brazil's coast,*

that the exploitation of crustaceans and other living resources, which are closely dependent on the seabed under the Brazilian territorial sea, is reserved to Brazilian fishing vessels, and

that exceptions to this provision can only be granted through international agreements,

*Note also* the position of the Government of the United States of America that it does not consider itself obligated under international law to recognize territorial sea claims of more than 3 nautical miles nor fisheries jurisdiction of more than 12 nautical miles, beyond which zone of jurisdiction all nations have the right to fish freely, and that it does not consider that all crustaceans are living organisms belonging to sedentary species as defined in the 1958 Geneva Convention on the Continental Shelf, and further

*Recognizing* that the difference in the respective juridical positions of the Parties has given rise to certain problems relating to the conduct of shrimp fisheries,

*Considering* the tradition of both Parties for resolving international differences by having recourse to negotiation,

*Believing* it is desirable to arrive at an interim solution for the conduct of shrimp fisheries without prejudice to either Party's juridical position concerning the extent of territorial seas or fisheries jurisdiction under international law,

*Concluding* that, while general international solutions to issues of maritime jurisdiction are being sought and until more adequate information regarding the shrimp fisheries is available, it is desirable to conclude an interim agreement which takes into account their mutual interest in the conservation of the shrimp resources of the area of this Agreement,

*Have Agreed as Follows:*

#### *Article I*

This Agreement shall apply to the fishery for shrimp (*Penaeus* (M.) *duorarum notialis*, *Penaeus braziliensis* and *Penaeus* (M.) *aztecus subtilis*) in an area of the broader region in which the shrimp fisheries of the Parties are conducted, hereinafter referred to as the "area of agreement" and defined as follows: the waters off the coast of Brazil having

the isobath of thirty (30) meters as the south-west limit and the latitude 1° north as the southern limit and 47° 30' west longitude as the eastern limit.

#### *Article II*

1. Taking into account their common concern with preventing the depletion of the shrimp stocks in the area of agreement and the substantial difference in the stages of development of their respective fishing fleets, which results correspondingly in different kinds of impact on the resources, the two Parties agree that, during the term of this Agreement, the Government of the Federative Republic of Brazil is to apply the measures set forth in Annex I to this Agreement and the Government of the United States of America is to apply the measures set forth in Annex II to this Agreement.

2. The measures set forth in Annexes may be changed by agreement of the Parties through consultation pursuant to Article X.

#### *Article III*

1. Information on catch and effort and biological data relating to shrimp fisheries in the area of agreement shall be collected and exchanged, as appropriate, by the Parties. Unless the Parties decide otherwise, such exchange of information shall be made in accordance with the procedure described in this Article.

2. Each vessel fishing under this Agreement shall maintain a fishing log, according to a commonly agreed model. Such fishing logs shall be delivered quarterly to the appropriate Party which shall use the data therein contained, and other information it obtains about the area of agreement, to prepare reports on the fishing conditions in that area, which shall be transmitted periodically to the other Party as appropriate.

3. Duly appointed organizations from both Parties shall meet in due time to exchange scientific data, publications and knowledge acquired on the shrimp fisheries in the area of agreement.

#### *Article IV*

1. The Party which under Article V has the responsibility for enforcing observance of the terms of the Agreement by vessels of the other Party's flag shall receive from the latter Party the information necessary for identification and other enforcement functions, including name, port

of registry, port where operations are usually based, general description with photograph in profile, radio-frequencies by which communications may be established, main engine horsepower and speed, length, and fishing method and gear employed.

2. Such information shall be assembled and organized by the flag Government and communications relating to such information shall be carried out each year between the appropriate authorities of the Parties.

3. The Party which receives such information shall verify whether it is complete and in good order, and shall inform the other Party about the vessels found to comply with the requirements of paragraph 1 of this Article, as well as about those which would, for some reason, require further consultation among the Parties.

4. Each of those vessels found in order shall receive and display an identification sign, agreed between the Parties.

#### *Article V*

1. In view of the fact that Brazilian authorities can carry out an effective enforcement presence in the area of Agreement, it shall be incumbent on the Government of Brazil to ensure that the conduct of shrimp fisheries conforms with the provisions of this Agreement.

2. A duly authorized official of Brazil, in exercising the responsibility described in paragraph 1 of this Article may, if he has reasonable cause to believe that any provision of this Agreement has been violated, board and search a shrimp fishing vessel. Such action shall not unduly hinder fishing operations. When, after boarding or boarding and searching a vessel, the official continues to have reasonable cause to believe that any provision of this Agreement has been violated, he may seize and detain such vessel. In the case of a boarding or seizure and detention of a United States vessel, the Government of Brazil shall promptly inform the Government of the United States of its action.

3. After satisfaction of the terms of Article VI as referred to in paragraph 4 of this Article, a United States vessel seized and detained under the terms of this Agreement shall, as soon as practicable, be delivered to an authorized official of the United States at the nearest port to the place of seizure, or any other place which is mutually acceptable to the competent authorities of both Parties. The Government of Brazil shall, after delivering such vessel to an authorized official of the United States, provide a certified copy of the full report of the violation and the circumstances of the seizure and detention.

4. If the reason for seizure and detention falls within the terms of Article II or Article IV, paragraph 4 of this Agreement, a United States vessel seized and detained shall be delivered to an authorized official of the United States, after satisfaction of the terms of Article VI relating to unusual expenses.

5. If the nature of the violation warrants it, and after carrying out the provision of Article X, vessels may also suffer forfeiture of that part of the catch determined to be taken illegally and forfeiture of the fishing gear.

6. In the case of vessels delivered to an authorized official of the United States under paragraphs 3 or 4 of this Article, the Government of Brazil will be informed of the institution and disposition of any case by the United States.

#### *Article VI*

In connection with the enforcement arrangements specified in Article V, including in particular any unusual expenses incurred in carrying out the seizure and detention of a United States vessel under the terms of paragraph 4 of Article V, and taking into account Brazil's regulation of its flag vessels in the area of agreement, the Government of Brazil will be compensated in an amount determined and confirmed in an exchange of notes between the Parties. The amount of compensation shall be related to the level of fishing by United States nationals in the area of agreement and to the total enforcement activities to be undertaken by the Government of Brazil pursuant to the terms of this Agreement.

#### *Article VII*

The implementation of this Agreement may be reviewed at the request of either Party six months after the date on which this Agreement becomes effective, in order to deal with administrative issues arising in connection with this Agreement.

#### *Article VIII*

The Parties shall examine the possibilities of cooperating in the development of their fishing industries; the expansion of the international trade of fishery products; the improvement of storage, transportation and marketing of fishery products; and the encouragement of joint ventures between the fishing industries of the two Parties.

*Article IX*

Nothing contained in this Agreement shall be interpreted as prejudicing the position of either Party regarding the matter of territorial seas or fisheries jurisdiction under international law.

*Article X*

Problems concerning the interpretation and implementation of this Agreement shall be resolved through diplomatic channels.

*Article XI*

This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, upon completion of internal procedures of both parties and shall remain in force until January 1, 1974, unless the Parties agree to extend it.

In witness whereof the undersigned representatives have signed the present agreement and affixed thereto their seals.

Done in duplicate this 9th day of May, 1972, in the English and Portuguese languages both texts being equally authoritative.

*ANNEX I*

- a) Prohibition of shrimp fishing activities, for conservation purposes, in spawning and breeding areas;
- b) Prohibition of the use of chemical, toxic or explosive substances in or near fishing areas;
- c) Registry of all fishing vessels with the Maritime Port Authority (Capitania dos Portos) and with SUDEPE;
- d) Payment of fees and taxes for periodical inspections;
- e) Use of the SUDEPE fishing logs to be returned after each trip or weekly;
- f) Prohibition of the use of fishing gear and of other equipment considered by SUDEPE to have destructive effects on the stocks;
- g) Prohibition of discharging oil and organic waste.

*ANNEX II*

- a) Not more than 325 vessels flying the United States flag shall fish for shrimp in the area of agreement and the United States Government undertakes to maintain a presence of no more than

160 of those vessels in the area at any one time. Such vessels shall be of the same type and have the same gear as those commonly employed in this fishery in the past, noting that electric equipment for fishing purposes has not been commonly employed by boats in this fishery in the past.

- b) Shrimp fishing in the area of agreement shall be limited to the period from March 1 to November 30.
- c) Shrimp fishing in that part of the area of agreement southeast of a bearing of 240° from Ponta do Ceu radio-beacon shall be limited to the period March 1 to July 1.
- d) Transshipment of catch may be made only between vessels authorized under this Agreement to fish in the area of agreement.

AGREED MINUTE RELATING TO THE  
AGREEMENT BETWEEN THE GOVERNMENT  
OF THE FEDERATIVE REPUBLIC OF BRAZIL  
AND THE GOVERNMENT  
OF THE UNITED STATES OF AMERICA  
CONCERNING SHRIMP

The Delegations of the Government of Brazil and the Government of the United States of America consider it desirable to record the points set out below relating to the Agreement between the two Governments concerning shrimp signed on the 9th day of May, 1972:

The Brazilian Delegation informed the United States Delegation that the portion of the area of Agreement between the true bearing of 240° and 225°, drawn from the Ponta do Ceu radio-beacon, has a special interest to the Brazilian shrimp vessels, in view of its vicinity to both the port and industries existing in Belem, State of Para. Under these circumstances, the Brazilian Delegation informed the United States Delegation that it was not the intention of the Brazilian Government to re-include such region in agreements it might conclude after 1973.

The United States Delegation stated its view to the Brazilian Delegation that the area of the Agreement between the true bearing of 240° and 225°, drawn from the Ponta do Ceu radio-beacon, lies on the high seas and is thus open to fishing by all nations.

Both the Brazilian and the United States Delegations agreed that, based on the available information, the expression "of the same type",

included in item A of Annex II in relation to United States vessels that have in the past fished in the area of the Agreement, means vessels having a length up to approximately eighty-five feet.

With respect to item A of Annex II, both Delegations agreed that an excess of up to 15 vessels in the area of agreement over the figure of 160 shall constitute, during the first fishing season of the Agreement, a situation requiring consultations between the Parties within the scope of Article X with a view toward arriving at as promptly as possible the agreed figure. In view of the special nature of the arrangements contained in item A of Annex II, both Delegations understand that consultations referred to in paragraph 2, Article II will be held as soon after the close of the current fishing season as possible, to examine the operation of this provision with a view toward revising, if necessary, the measures outlined in item A of Annex II or revising the procedures necessary to achieve better compliance with them.

May 9, 1972

#### Note

The Embassy of the United States of America presents its compliments to the Ministry of External Relations of the Federative Republic of Brazil, and with reference to the Agreement Concerning Shrimp signed on this date, as well as the accompanying exchange of Notes related to Article VI of that Agreement, has the honor to inform the Ministry of the following:

Pending the entering into force of the agreement as provided for in article eleven, the Government of the United States of America is prepared to make every effort to encourage the voluntary compliance by its industry of the provisions of the Agreement so as to ensure that events in the interim period do not prejudice the successful implementation of those provisions. It is the understanding of the Government of the United States of America that the Government of the Federative Republic of Brazil intends also to abide by the spirit of the proposed interim Agreement.

Following the exchange of instruments of ratification, but prior to the passage of enabling legislation, the Government of the United States of America proposes to continue its efforts to encourage voluntary compliance.

In the period between the completion of internal procedures as noted in article eleven and the entering into force of the Agreement, the Government of the United States of America will seek, *inter alia*, with the voluntary cooperation of U.S. flag vessel owners.



1. To achieve the objectives of Article II
2. To institute appropriate Article III procedures
3. To achieve the intent of Articles IV and V.

In stating its willingness to encourage the voluntary compliance with appropriate provisions of the Agreement so that the intent of the accord may be achieved while awaiting its entering into force, it is the understanding of the Government of the United States of America that the Government of the Federative Republic of Brazil agrees that in this same interim period both Parties should have as their objective the achievement of the intent of the Agreement.

With specific reference to Article III, paragraph 2, the Government of the United States of America shall treat the information obtained from individual fishing logs as confidential.

Reply to the Note from the American Embassy:

The Ministry of External Relations of the Federative Republic of Brazil presents its compliments to the Embassy of the United States of America and has the honor to acknowledge receipt of the Embassy's note of today's date, which reads as following:

(Note of the USA)

2. In reply, the Ministry of External Relations wishes to confirm that the understanding referred to in the penultimate paragraph of the Embassy's note is shared by the Brazilian Government.

3. Furthermore, the Ministry of External Relations wishes to state that, pending the entry into force of the Agreement, it is the intent of the Brazilian Government to apply its provisions insofar as possible from today and in a manner which will ensure that events in the interim will not prejudice the successful implementation of those provisions.

4. With specific reference to Article III, paragraph 2, the Government of the Federative Republic of Brazil shall treat the information obtained from individual fishing logs as confidential.

Brasilia, May 9, 1972

No.

Excellency:

I have the honor to refer to the Agreement on Shrimp signed today

by the Governments of the Federative Republic of Brazil and the United States of America and to confirm, on behalf of my Government, the following:

a) The Government of the United States of America shall, after the appropriation of funds by Congress, compensate the Government of Brazil in an annual amount of U.S. \$200,000 (two hundred thousand dollars) pursuant to the terms of Article VI;

b) The Government of the United States of America shall, after the appropriation of funds by Congress, further compensate the Government of Brazil in the amount of U.S. \$100.00 (one hundred dollars) for each day a United States flag shrimp fishing vessel is under the control of Brazilian enforcement authorities pursuant to the terms of paragraph 2 of Article V.

I have the honor to propose that this Note and Your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting satisfaction of the terms of Article VI of the aforementioned Agreement between the two Governments.

Accept, Excellency, the renewed assurances of my highest consideration.

His Excellency

Mario Gibson Barboza  
Minister of Foreign Affairs  
Brasilia

Brasilia, May 9, 1972

Excellency,

I have the honor to acknowledge receipt of Your Excellency's note, of today's date, which reads as follows:

(Note of the USA)

2. In reply, I wish to confirm, on behalf of the Brazilian Government, that the above points of understanding shall be regarded as constituting satisfaction of the terms of Article VI of the Agreement on Shrimp, signed today by the two Governments.

I avail myself . . . . .